THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16673 OF 1998

DATED: 21st MARCH, 2007.

Between :

1.M.K. Narasimha Reddy and 4 others. .. Petitioners

And

1. The Divisional Forest Officer, West Division, Chittoor and 2 others. .. Respondents

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ORDER :

The petitioners herein claim title and possession in respect of 45 acres of land situated to the West of Sy.Nos.127 to 133 in Thumbakuppam Village, Bangarupalyam Mandal, Chittoor District. .

The said land forms part of 10,000 acres of land comprising in Thumbakuppam Village, North Forest Block in Bangarupalyam Mandal, Chittoor District which was notified under Sections 4 and 14 of the Andhra Pradesh (Andhra Area) Forest Act, 1882 (for short, 'the Act'). In response to the proclamation under Section 6 of the Act inviting claims and objections, the petitioner made a claim petition for eliminating the land in his possession from the proposed Thumbakuppam North Block. The Forest Settlement Officer, Nellore after conducting due enquiry passed an order dated 2-5-1975 holding that the claim of the petitioners is bona fide. Accordingly, it was ordered that an extent of 45 acres should be eliminated from the proposed Thumbakuppam North Block. Aggrieved by the same, the Divisional Forest Officer filed an appeal being A.S.No.90 of 1975 on the file of the Court of the District Judge, Chittoor. The said appeal was allowed by Judgment dated 22-10-1979 reversing the order passed by the Forest Settlement Officer, Nellore dated 2-5-1975. Questioning the same, the petitioner preferred Civil Revision Petition No.5190 of 1980. This Court allowed the Revision by order dated 16-1-1984 recording a finding that the land in question continued to be communal land and therefore the same must be excluded from the

proceedings of the notification issued under Sections 4 and 14 of the A.P. (Andhra Area) Forest Act, 1882. It is not in dispute that the said order has become final. However, in spite of several representations made by the petitioners, the land in question has not been excluded. On the other hand, the 3rd respondent - Forest Settlement Officer was interfering with the possession and enjoyment of the lands in question by the petitioners and the other ryots. Hence, this writ petition seeking a Writ of Mandamus directing the respondents to eliminate 45 acres of land situated in Plot Nos.1 to 14 in Thumbakuppam North Block Forest which is held to be communal land and re-determine the proposed Reserved Forest land.

On behalf of the respondents, a counter-affidavit has been filed in which the fact that the order of this Court in CRP.No.5190 of 1980 has become final is not disputed. However, it is stated that in the meanwhile the Forest (Conservation) Act, 1980 has come into force and as per the clarification of the Government dated 22-7-1989 the Divisional Forest Officer has no power to implement the award without prior permission/approval of the Government of India. It is also stated that the respondents made a request to the Revenue Authorities as well as the Survey and Land Records Department to provide certain records for the purpose of ascertaining whether the lands in question are the same lands which are the subject-matter of CRP.No.5190 of 1980. As soon as the records are received, joint survey will be conducted and the proposals will be submitted to the Government of India seeking permission under Forest (Conservation) Act, 1980 for implementing the award as per the directions of this Court in CRP.No.5190 of 1980.

I have heard the learned Counsel for both the parties and perused the material on record.

In identical circumstances, this Court in N. RAJAGOPAL REDDY v. DISTRICT COLLECTOR, CHITTOOR[1], having considered the

relevant provisions of the Forest (Conservation) Act, 1980 held that the Government cannot refuse to implement the order of the Forest Settlement Officer for exclusion of the land on the ground that the prior permission from the Central Government is required. It was also held that Section 2 of the Forest (Conservation) Act, 1980 does not apply when the land is being used for non-forest purposes.

In the case on hand, it was held by this Court in CRP.No.5190 of 1980 that the land in question was being used for communal purposes i.e., non-forest purposes. Hence, as held by this Court in N. RAJAGOPAL REDDY's case (1 supra) Section 2 of the Forest (Conservation) Act, 1980 is not attracted and consequently the prior permission from the Central Government is not required.

In the circumstances, the stand taken by the respondents in their counter-affidavit that the order in CRP.No.5190 of 1980 could not be implemented for want of prior permission from the Central Government cannot be accepted. Hence, the respondents are bound to exclude the land in question as directed by this Court in CRP.No.5190 of 1980.

Accordingly, the Writ Petition is disposed of with a direction to the respondents to conduct joint survey in the presence of the officials of Revenue and Forest and after due notice to the petitioners as well as the other residents of the village so as to demarcate the land in question from Thumbakuppam North Forest Block and thereafter to exclude the land in question in terms of the order in CRP.No.5190 of 1980 following due process of law within a period of 3 months from the date of receipt of this order. No costs.

G. ROHINI, J.

Dt. 21-3-2007
gbs

[1] 1999 (5) ALD 586